

PUBLIC MEETING
March 27, 2001

Chair Karolin Loendorf called the meeting to order at 9:05 a.m.

Commissioners Murray and Varone were present. Others attending all or a portion of the meeting included K. Paul Stahl, Sharon Haugen, Paul Spengler, Jerry Grebenc, Jim Taylor, Ronald Schatz, Carolyn Clemens, Steve Hendricks, Skee Tenneson, Mike Wagner, John Shaw, John Nickel, Gina Loss, Clint Loss, Gene Thirsk, and Kim Ingwaldson.

Minutes. There were no minutes to approve.

Recognition. The Commissioners acknowledged the continued efforts of Deputy County Attorneys Carolyn Clemens and K. Paul Stahl.

Lewis and Clark County Revised Floodplain Ordinance. (cont. from 3/13&20/01). Paul Spengler reported this is the third public hearing to review the proposed amendments to the floodplain ordinance. Deputy County Attorney K. Paul Stahl prepared a summary of the recommended revisions from the last public meetings. Commissioner Varone moved that the Commission approve the Lewis and Clark County floodplain regulations revised March 2001 and establish a feasible floodplain management program, which will set forth incremental and affordable changes that over a period of time will accomplish the degree of floodplain management.

By consensus, the Commission included into the public record the emails and letters received.

K. Paul Stahl read the recommended changes:

Item 1, Page 22-Appendix. It was recommended that within the definition of floodplain delete reference to Appendix B because the new regulations do not include an Appendix B. Commissioner Varone moved to approve the deletion as recommended. Commissioner Loendorf seconded the motion. Commissioner Murray opposed the motion. The motion passed 2-1.

Item 2, Page 22-Appendix. It was recommended that within the definition of floodplain to delete language that says including designated shallow flooding area areas that receive less than one foot of water per occurrence. Commissioner Varone moved that the Commission approve the deletion as recommended. Commissioner Loendorf seconded the motion. Commissioner Murray opposed the motion. The motion passed 2-1.

Item 3, Page 22-Appendix, within the definition of floodway. Delete See Appendix B. Commissioner Varone moved that the Commission approve the deletion as recommended.

Commissioner Loendorf seconded the motion. Commissioner Murray opposed the motion. The motion passed 2-1.

Item 4, Page 22-Appendix, within the floodway fringe. Delete the language See Appendix B. Commissioner Varone moved that the Commission approve the deletion as recommended. Commissioner Loendorf seconded the motion. Commissioner Murray opposed the motion. The motion passed 2-1.

Items 5 & 6. Page 7, Section 1.05 A-1-I. Delete comprehensive plan and insert Growth Policy. Commissioner Varone moved that the Commission approve the recommended change in item 5 and not include item 6. Also modify uppercase "I" to lower case "i." Commissioner Murray seconded the motion and it carried unanimously.

Item 7. Page 4- Section 1.3E. Commissioner Varone moved to approve with the inclusion of the floodplain. Commissioner Murray seconded the motion and it carried unanimously.

Items 8 & 9. Page 5, 1.04 B-3-e. Commissioner Varone moved that the Commission not consider items 8 or 9 at this time. Commissioner Murray seconded the motion and it carried unanimously.

Item 10. Page 5, Section 1.04 C-2. Delete the number 60 and insert 30 working days and insert in writing after the word application. Commissioner Varone moved that the Commission approve the modification. Commissioner Murray seconded the motion and it carried unanimously.

Item 11. Page 5, Section 1.04 C-3. Delete the entire section. Commissioner Varone moved that the Commission approve the deletion. Item 12 is additional information on item 11 and Commissioner Varone further moved that the Commission not consider item 12 at this time. Commissioner Loendorf seconded the motion and it carried unanimously.

Items 13, Page 10 and Item 14, page 16, change uppercase letter "I" to lower case "i". Commissioner Varone moved that the Commission approve the modification in both items. Commissioner Loendorf seconded the motion and it carried unanimously.

Item 15, page 22, within the definition of floodway. Typographically error to replace "2" with "1/2". Commissioner Varone moved that the Commission approve the modification. Commissioner Loendorf seconded the motion and it carried unanimously.

The motion to approve the revisions to the Lewis and Clark County Floodplain Regulation carried 2-1 with Commissioner Murray opposing the motion.

Request to Modify the Conditions of Approval for the Tenneson Estates II Major

Subdivision, Preliminary Plat. (cont. from 3/13/01). The applicant, Skee Tenneson, proposed a modification for the proposed subdivision in NE ¼ of Section 18, T10N, R2W; located at the east end of East Howard Road. Jerry Grebenc reported that staff was directed to develop an equitable way to have the applicant from Dakota Valley and Mr. Tenneson to address the paving and road issues. After discussion with the parties, the applicant will be required to construct East Howard Road to a gravel standard initially because currently the road does not meet county standards for width construction. If prior to the development of the applicant's second phase, if vehicle trips exceed 400 per day prior to platting of his second phase, he would be responsible for paving the road. Other staff recommendations to the applicant's modification request are outlined staff's March 7, 2001 memorandum. Mr. Tenneson had nothing new to add.

Commissioner Murray moved that the Commission approve the amended conditions as proposed by staff be adopted. Commissioner Varone seconded the motion and it carried unanimously.

Proposed Minor Subdivision, Summary Review, Bailly Minor, Lot A Amended. The applicant proposes to create an additional space for rent for commercial purposes. The proposal is generally located east of Carter Drive, approximately ¼ mile north of Prospect Avenue. The applicant, Jim Dusenberry, was present, and indicated his willingness to proceed. Frank Rives presented the staff report. The majority of the property is gravel. The property is within Urban Area B and has been used for light industrial and commercial purposes. There are standard restrictive covenants on the property. The applicant proposes to relocate the septic tank and install sewer connections to the proposed building and disconnect them from the existing building. The property is within the Lewis and Clark County air quality district with no adverse impacts to air quality expected. Legal access to the property is Carter Drive. Staff recommended approval subject to 12 conditions as outlined in the staff report.

Jim Dusenberry, Box 4882, Helena. Mr. Dusenberry stated that the modification is in the interest of cash flow for his business for future annexation. He has been working with the city to alleviate problems with the sewer system. He concurred with the conditions of approval.

Hearing no public comments, the Commission closed this portion of the hearing.

Commissioner Murray moved that the Commission approve the proposed subdivision subject to the 8 conditions as recommended by staff. Commissioner Varone seconded the motion and it carried unanimously.

Proposed Minor Subdivision, Preliminary Plat, Sweeney Creek Tracts, Lot 23 Minor. The applicant proposes to create four lots, each for one single-family dwelling. The proposal is

generally located north of Highway 12 West, approximately 8 miles west of Helena. The applicant, Mike Wagner, was present and indicated his willingness to proceed. Jerry Grebenc presented the staff report. The applicant proposes individual on-site systems. Due to the fractured bedrock in the area, improperly located and installed and maintained onsite wastewater systems could contaminate down gradient wells. Water availability appears to be adequate for domestic use, but long-term availability from bedrock aquifers is unknown. A gas pipeline owned by Yellowstone Pipeline Company crosses proposed lot 1. A 50-foot wide easement for this pipeline would need to be indicated on the final plat. YPC requested that their right-of-way development provisions be adopted as a condition of approval and is attached to the staff report. Ten-foot underground easements would also be required. The legal and physical access to the property is via internal access roads connecting to Highway 12. Staff recommended that a no-access restriction be established along the southern boundary of lot 1 and 3 to limit access to Highway 12 except via the internal access road. The applicant should contact MDT to insure that the approach is adequate. The fire district has requested that the applicant submit a fire protection plan to provide adequate fire protection to the proposed subdivision. Development of the subdivision would be highly visible to travelers on Highway 12 West and would have immediate negative impacts on the areas scenic area and therefore buildings should be constructed to blend in with the surrounding environment. FWP stated that further subdivisions in this area would be very detrimental to wildlife populations and the proposed lot sizes are not conducive to maintaining critical winter range for big game animals due to lack of open space and loss of forage. FWP has historically made recommendations for proposed subdivisions which are included in the staff report. Radon is high in this area primarily due to the genetic nature of the underlying bedrock. The proposal's departure from the existing development pattern of the lots that are predominantly 20 acres in size would create a precedent for similar development in an environmentally sensitive area. Staff recommended denial based upon the following criteria: (1) the proposed density of the development is a departure from the pattern of development currently existing; (2) wildlife values would be negatively affected; (3) the proposed subdivision, when developed, would have an immediate long-lasting effect upon the scenic values of the surrounding landscape; (4) development of the proposed subdivision would enlarge the residential wildland interface; thus increase the hazards of wildland fires; and (5) the proposed subdivision would set a precedent for further division of land in an area identified as having environmental constraints.

Mike Wagner, 2905 Baxendale Drive. Mr. Wagner presented the Commission with an informational packet regarding the proposal. When he purchased this property in 1999, he excavated 10 test pits and did not hit bedrock or ground water until reaching nine feet in depth. This 20-acre site could support four on-site sewage treatment facilities. This tract is unique because it contains an MDT approved permitted approach that accesses Highway 12. He does not agree that this development would set a precedent for development throughout the remainder of the Sweeney Creek tracts. It is his

professional opinion that there are areas outside of the localized high ground water that are conducive and would facilitate on-site sewage treatment facilities. In light of the concerns regarding density, he proposed to modify his proposal to 3 lots, one ten-acre parcel and two five-acre parcels, instead of 4 lots.

The Commission opened the public hearing.

Gina Loss, 7600 Highway 12 West. Ms. Loss stated that many of the Sweeny Tract parcels are owned by one owner, which reflects the low density of housing in the area. The subject proposal would have a negative impact on wildlife. People do not confine their dogs which have killed wildlife and pets and they do not control their weeds. This proposal is not appropriate at this time.

Mike Hruska, 7590 Highway 12 West. Mr. Hruska opposes the proposal. The county should follow the covenants of the area.

Clint Loss, 7600 Highway 12 West. Mr. Loss stated there are numerous counts of elk and deer in the area. He opposes the development as proposed.

Ron Schatz, Schatz Ranch. His main concern is his irrigation water. His ranch experienced a water shortage during the summer. There is plenty of wildlife. He recommended that the commission deny the proposed subdivision.

Hearing no other public comments, the Chair closed this portion of the hearing. Commissioner Murray moved that the commission render a final decision Tuesday, April 3, 2001 at 9:00 a.m. The motion died for the lack of a second.

The applicant requested an extension of the review period to April 20 and that staff prepare conditions of approval based on three lots.

Commissioner Varone moved that the Commission direct staff to present the Commission with conditions of approval on April 17. Commissioner Loendorf seconded the motion and it carried unanimously.

Commissioner Murray moved that the Commission render a final decision April 19, 2001 at 10:00 a.m. in room 309. Commissioner Varone seconded the motion and it carried unanimously.

Cronin Matter. Gene Thirsk, 3495 Juniper Drive. Mr. Thirsk discussed the problems with neighbor Stan Cronin in his building of a garage and using it for commercial purposes of junk vehicles, which is in violation of the zoning and the covenants of Lamb Ranchettes.

This commercial business has depreciated his property values and he would like to see some enforcement action.

K. Paul Stahl stated this issue with Mr. Cronin is a legal proceeding and if Mr. Thirsk wants to become involved he may do so with his own attorney. A legal action has been filed against Mr. Cronin for violating the zoning regulations. Mr. Cronin has been advised to cease and desist all commercial activity. The county is in settlement discussions with Mr. Cronin at this time and the settlement document will be of public record.

Commissioner Varone requested that the County Attorney office copy all legally possible correspondence to Mr. Thirsk and Mr. Hall.

ASARCO Letter. Jon Nickel, Asarco Environmental Manager, with John Shaw, Plant Manager. Mr. Nickel presented two proposals: (1) a permit and access agreement dated March 7. Asarco and EPA entered into a consent decree that required Asarco to construct a landfill south of the East Helena plant. To accomplish this, Asarco must cross the county road south of the plant. Asarco plans to pave the access roads and post flagmen at both crossings. Asarco presented a letter to the Commission outlining the understanding with the county and requested that the Commission expedite the approval of the permit with Asarco's full commitment to pay for the paving between the two access roads.

Commissioner Murray moved that the Commission take the materials provided by Asarco under consideration and review by the Public Works Department and render a final decision Tuesday, April 3 to allow staff to prepare conditions of approval. Commissioner Varone seconded the motion and it carried unanimously.

Mr. Nickels stated under the same consent decree with EPA, Asarco is obligated to collect soil samples along state highway 330 and along the county road in discussion. In a letter dated March 12 to Sharon Haugen asking her to execute an access agreement to allow Asarco access to the county road to obtain the soil samples, he requested that action be taken as quickly as possible.

Commissioner Murray moved that the Commission instruct staff to turn over the proper paperwork to Asarco by 5:00 p.m. Tuesday and authorized the vice-chairman to sign the document. Commissioner Varone seconded the motion and it carried unanimously.

There being no other business, the meeting adjourned at 11:20 a.m.